

Message

From: Nassif, Julianne (DPH) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MASSMAIL-01/CN=RECIPIENTS/CN=JULIANNE.NASSIF]
Sent: 11/18/2009 2:49:49 PM
To: Allain, Nicole (NOR) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MASSMAIL-01/CN=RECIPIENTS/CN=NOR/cn=Users/cn=Nicole.Allain]
CC: Ryan, Marian (NOR) [/O=COMMONWEALTH OF MASSACHUSETTS/OU=MASSMAIL-01/CN=RECIPIENTS/CN=NOR/cn=Users/cn=MRyan]
Subject: RE: Commonwealth v. [REDACTED]

Ms. Allain,

As you might imagine, laboratory productivity has suffered greatly as a consequence of the Melendez-Diaz decision. The requirement for chemists to provide direct oral testimony has resulted in several hundred hours in chemists' time spent traveling to and testifying in court. As such, little analytical testing is actually occurring, the turn around time is increasing and the sample backlog is growing.

I recently implemented the following policy with respect to cases requesting testimony from a chemist who has either retired or resigned. The laboratory will provide an alternate chemist to testify to the notes of the original chemist. If it is a case where another chemist is already scheduled to testify, he or she will provide that testimony. In the case that you reference, Ms. Saunders is well qualified to testify to Ms. Gao's notes as Ms. Saunders routinely performs the same tests and was Ms. Gao's immediate supervisor. Given our considerable backlog (15,000+ samples) and the increasing demands on our chemists' time, I have decided not to allow resubmittal and retesting of samples. Yours is the second request I received this week (as of Tuesday).

I am confident that you can successfully prosecute this case with Ms. Saunders as the lone witness. Suffolk County routinely (and successfully) calls 1 witness to testify (usually the confirmatory chemist) even when the other chemist is available. Jeremy Bucci, Chief of the Narcotics Unit and/or Christina Miller, Chief of the District Court may be able to provide additional guidance if needed.

Please feel free to contact me if you would like to discuss further, 617-983-6651.

Julie Nassif

From: Allain, Nicole (NOR)
Sent: Tuesday, November 17, 2009 3:30 PM
To: Nassif, Julianne (DPH)
Cc: Ryan, Marian (NOR)
Subject: FW: Commonwealth v. [REDACTED]
Ms. Nassif--

I have this case coming up for trial in the Middlesex Superior Court on 12/1. The preliminary chemist was Xiu Ying Gao, who I believe now lives in China and no longer works for the lab. Della Saunders was the confirmatory chemist on the sample and I know she still works at the lab. This defendant was convicted in 2007 but his conviction was overturned so we have to retry this case.

In light of the Melendez-Diaz case which requires me to bring in the chemists to testify about their examination and analysis of the samples, I will need to have the chemists testify at trial. As the confirmatory chemist, it is my understanding that Xiu Ying Gao weighed the sample. Weight is an element that I will have to prove because the defendant is charged with Trafficking Cocaine Over 14 grams. It is also my understanding that as the

confirmatory chemist, Ms. Saunders never saw the actual sample, nor did she weigh it. In order for me to proceed at trial, I will need to have the sample weighed by a chemist who can testify in court as to the weight of the sample now. I understand that the weight of the sample will be less than it originally was because some of it was consumed during the first analysis. However, I still need to present testimony about the weight to prove the trafficking charge.

Can you let me know how to coordinate this so that a chemist can view the substance and reweigh it? I hope to be able to resubmit the sample to the lab this week in the hopes that reweighing can be completed by 12/1.

Thank you very much for your assistance with this,

Nicole Allain
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